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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

DANIEL S.,

Petitioner,

v.

THE SUPERIOR COURT OF CONTRA
COSTA COUNTY,

Respondent;

CONTRA COSTA COUNTY CHILDREN
AND FAMILY SERVICES BUREAU
et al.,

Real Parties in Interest.

A156846

(Contra Costa County
Super. Ct. No. J17-01098)

Petitioner Daniel S. (father) seeks review by extraordinary writ of orders of the juvenile court terminating reunification services and setting a permanency planning hearing for his now four-year-old daughter. He contends the court erred in bypassing him for reunification services. We deny the petition.

Factual and Procedural Background

In October 2017, the then two-year-old child was detained after the bureau filed a juvenile dependency petition under Welfare and Institutions Code¹ section 300. In January 2018, the court sustained the allegations of the petition. With respect to mother, the court sustained allegations that the child had witnessed domestic violence between

¹ All statutory references are to the Welfare and Institutions Code.

mother and her partner and that mother used methamphetamine for the past two years. The court sustained the allegation regarding father that he was on probation at a halfway house in Iowa and, thus, unable to care for his child.

According to the disposition reports, father was to remain on probation in Iowa for a year. He was not to have any contact with any children but was allowed supervised contact with his biological children if arranged through his probation officer. By late February, however, father had left the halfway house and a warrant had been issued for his arrest.

At the disposition hearing in June 2018, the court ordered out-of-home placement for the child. The court bypassed reunification services for father under section 361.5, subdivision (b)(1) because his whereabouts were unknown. The six-month review hearing was set for November 28, 2018.

At the November hearing, a social worker filed a status report indicating that father was incarcerated with a projected release date of July 2019. At the same hearing, minor's counsel filed a petition under section 388 to modify the court's previous disposition order to include a denial of reunification services to father pursuant to section 361.5, subdivision (e), due to his incarceration.

The contested 388 petition and combined six- and twelve-month review hearing commenced on February 6, 2019. A social worker testified that there had been no authorized contact between father and his daughter since the child was detained in October 2017. There had been, however, some unauthorized telephone contact between father and the child in early 2018. The department had no record of contact with father from February 2018, when he left the halfway house, until October 2018, when the social worker discovered that he was in prison.

A second social worker testified that when she received the case in September 2018, she promptly completed a due diligence search for father. She did not offer him services once his whereabouts were discovered, but she did contact the prison counselors to ascertain what services were available at the prison. She eventually learned that the

prison offered only the opportunity for father to earn his high school equivalency diploma. No other family reunification services were available at father's prison.

Father admitted that he violated his probation by leaving his halfway house and that he was apprehended in July 2018. He testified that he expects to be released in May 2019 and that, thereafter, he must remain at the halfway house until July 1, 2019. After his release, he planned to obtain housing and employment and to secure day care for his child.

On March 15, at the conclusion of the hearing on the section 388 petition, the court granted the petition and denied services to father under section 361.5, subdivision (e). The court found by clear and convincing evidence that it would be detrimental to the minor to provide services to the father. The court explained "it's been two years since he's actually seen her face-to-face and had been able to hold her, to have physical contact with his daughter." The court noted that father had some contacts with his daughter via FaceTime in early 2018, but observed, "I don't think anyone truly believes that the relationship that they have at this time or even when these contacts were happening in 2018 reflects a very strong bond. [¶] [The child] is very young and this was phone contact that lasted for what appears to have been minutes during visits with her mother." The court also noted that father had not actively tried to remain in contact with the bureau and that when father would be allowed to leave the halfway house, more than 20 months would have passed from the time of detention. Ultimately, the court concluded, "I can under no circumstances find that it would be appropriate to extend or provide reunification services to [father] at this time." To the contrary, the court found it "abundantly clear" that the provision of reunification services to father would be detrimental to the child.

Father timely filed the present petition.

Discussion

Father contends the trial court erred in bypassing him for reunification services. As discussed below, we find no error.

There is no doubt that at the June 2018 disposition hearing, father was properly bypassed for services under section 361.5, subdivision (b)(1).² Father argues, however, that services should have been provided in October and November 2018 when the department first learned his whereabouts. In this regard, section 361.5, subdivision (d) provides: “If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the child, the court shall order the social worker to provide family reunification services in accordance with this subdivision.” Contrary to father’s suggestion, the social worker could not offer father services without a court order. The social worker properly advised the court in the status report prepared for the combined six- and twelve-month review hearing that father had been located.

The November review hearing was continued to adjudicate minor’s petition to modify the dispositional order to bypass services pursuant to section 361.5, subdivision (e). Section 361.5, subdivision (e)(1) provides in relevant part: “If the parent or guardian is incarcerated, . . . the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child.” In determining detriment, the court shall consider, among other factors, “the age of the child, the degree of parent-child bonding, . . . [and] the likelihood of the parent’s discharge from incarceration, institutionalization, or detention within the reunification time limitations described in subdivision (a).” (*Ibid.*) As set forth above, the court properly considered the child’s young age (two years old at the time of removal, three years old at the time of the hearing) and lack of a bond with father. The court reasonably concluded that any relationship father may have developed with his daughter when she was a baby was not sufficient to outweigh the complete lack of contact between the two in the years preceding the hearing. Most importantly, as the court observed, by the time

² Section 361.5, subdivision (b) provides in part: “Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following: [¶] (1) That the whereabouts of the parent or guardian are unknown.”

father is released from custody, more than 20 months will have passed since the child's placement in foster care. When a child is under the age of three when removed from her parent's custody, under section 361.5, subdivision (a)(1)(B), court-ordered services may not be provided for a period longer than 12 months from the date the child entered foster care. Services may be extended beyond the 12-month period but not more than 24 months, upon a finding that "there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period or that reasonable services have not been provided to the parent or guardian." (§ 361.5, subd. (a)(3)(A).) In extending the time period, the court is directed to "consider, among other factors, good faith efforts that the parent or guardian has made to maintain contact with the child." (*Ibid.*) Here, Father made no efforts to maintain contact with the child or the social worker after absconding from the halfway house and there is no likelihood that the child would be placed in his custody within the maximum time period permitted under the statute. Accordingly, the trial court did not err in bypassing services under section 361.5, subdivision (e).

Father was not prejudiced by the brief delay in adjudicating the section 388 petition. The petition was filed on November 28, 2018. As defendant notes, under California Rules of Court, rule 5.570(f), the hearing on the petition should have commenced by January 28, 2019.³ In setting the hearing for February 6, the court noted that the pretrial hearing would be January 23 and that "while we would like to have it done earlier, it is not possible." The contested hearing commenced as scheduled on February 6. Testimony was taken over two sessions on February 6 and March 14, and the court decided the petition on March 15. Between the February 6 and March 14 hearings, the court held a hearing to resolve outstanding issues under the Indian Child Welfare Act.

³ California Rules of Court, rule 5.570(f) reads in part: "If there is no such stipulation and the petition has not been denied ex parte under section (d), the court must either: [¶] (1) order that a hearing on the petition be held within 30 calendar days after the petition is filed; or [¶] (2) order a hearing for the parties to argue whether an evidentiary hearing on the petition should be granted or denied. If the court then grants an evidentiary hearing on the petition, that hearing must be held within 30 calendar days after the petition is filed."

The record establishes that the court was determined to move the matter forward as quickly as possible and that, in any event, the limited delay was not prejudicial.

Father was not entitled to services while the hearings were pending. Father appeared in these proceedings and knew that his daughter had been removed from her mother's custody before he intentionally absented himself from the proceedings. Although the continuances of the dispositional hearing delayed entry of the out-of-home placement order until June 2018, father chose not to participate in the proceedings for well over six months (February to October 2018) and was only located as a result of the social worker's due diligence.

Accordingly, we find no error in the denial of reunification services.

Disposition

The petition is denied on the merits. (§ 366.26, subd. (l)(1)(C); Cal. Rules of Court, rule 8.452(h).) The request for stay is denied as moot. Our decision is final as to this court immediately. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

POLLAK, P. J.

WE CONCUR:

STREETER, J.
BROWN, J.